IN THE COURT OF APPEALS OF IOWA

No. 1-698 / 10-1642
Filed November 9, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MANFRED LEROY LITTLE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

A defendant appeals his conviction of first-degree kidnapping. **AFFIRMED.**

Gary Dickey of Dickey & Campbell Law Firm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant Attorney General, John P. Sarcone, County Attorney, and Steve Foritano and Michael Salvner, Assistant County Attorneys, for appellee.

Heard by Sackett, C.J., and Vogel and Eisenhauer, JJ. Tabor, J., takes no part.

VOGEL, J.

Manfred Little appeals his conviction of first-degree kidnapping in violation of Iowa Code sections 710.1 and 710.2 (2005). He argues his conviction must be overturned because (1) the trial information was unconstitutionally vague; and (2) there was insufficient evidence of kidnapping. He also asserts that the district court abused its discretion in denying his motion for a new trial. Little did not preserve error on his claim regarding the trial information. We find sufficient evidence supported the first-degree kidnapping conviction and the district court did not abuse its discretion in denying Little's motion for a new trial. We affirm.

I. Background Facts and Proceedings.

On August 28, 2006, a trial information was filed charging Little with first-degree kidnapping in violation of Iowa Code sections 710.1 and 710.2 and willful injury causing serious injury in violation of Iowa Code section 708.4(1). In 2008, a trial was held. From the evidence presented at trial, a fact-finder could have found that Little subjected his second wife (Jane Little) to horrific, systematic emotional, physical, and sexual abuse over a period of approximately three months. A jury found Little guilty as charged.

Little appealed and argued in relevant part (1) the district court erred by denying his motion for a bill of particulars; (2) the district court erred by admitting testimony of his ex-wife and two daughters pertaining to prior incidents of domestic abuse that occurred during the forty years of his previous marriage; and (3) there was insufficient evidence to support the kidnapping conviction. *State v. Little*, No. 08-1125 (Iowa Ct. App. Mar. 10, 2010). This court held that it was error to admit the testimony of Little's ex-wife and two daughters with respect to

prior incidents of domestic abuse and the erroneous admission required reversal of the kidnapping conviction, but not the willful injury causing serious injury conviction. *Id.* In spite of the reversal, this court was required to address Little's sufficiency of the evidence argument:

> Turning back to the kidnapping charge, since we are reversing and remanding, we have to consider Fred's assertion that there should not be a second trial, because the evidence was insufficient as a matter of law to establish kidnapping the first time around. *See State v. Dullard*, 668 N.W.2d 585, 597 (Iowa 2003). On this point, we disagree with Fred. Fred wrote, in a letter that was admitted into evidence at trial, "There's a good reason why some people may have thought it appeared to be kidnapping, but it wasn't." Iowa law does not require any minimum period of confinement for kidnapping. *State v. Rich*, 305 N.W.2d 739, 745 (Iowa 1981). There was sufficient evidence from which a reasonable jury could conclude that Fred confined Jane, knowing he did not have her consent, with the purpose of inflicting serious injury or sexual abuse on her. Iowa Code § 710.1 (elements of kidnapping). There was also sufficient evidence from which a reasonable jury could find that Jane suffered serious injury or was intentionally subjected to torture or sexual abuse as a result of the kidnapping. *Id.* § 710.2 (additional elements of first-degree kidnapping). For example, and this is just one example, a jury could have found that by brutally beating Jane, threatening to kill her, and taking away her means of communication with the outside world, Fred intended to and did confine her at home periodically against her will, so he could subject her to unwanted sex and perverse mind games.

Id. As for Little's bill of particulars argument, we declined to reach it finding that it would likely not arise in the same way or at all on retrial. Therefore, Little's willful injury conviction was affirmed, but his kidnapping conviction was reversed and remanded for a new trial.

A second trial was held in 2011, with substantially the same evidence being admitted. A jury found Little guilty of first-degree kidnapping. Little appeals and argues (1) the district court should have granted his motion for bill of

particulars; (2) sufficient evidence did not support the kidnapping conviction; and (3) the district court should have granted his motion for a new trial.

II. Bill of Particulars.

Little asserts that the trial information was unconstitutionally vague and the district court should have granted his motion for a bill of particulars. The State responds that error was waived because the motion was not timely filed prior to either the first or second trial. Prior to the first trial, Little filed an untimely motion for a bill of particulars. Iowa R. Crim. P. 2.11(5) ("A motion for a bill of particulars may be made any time prior to or within ten days after arraignment unless the time be extended by the court for good cause shown."). Prior to the second trial on June 25, 2010, Little filed a motion for a bill of particulars, but the motion was never ruled upon.

In order to preserve error, an issue must be timely raised before the district court and decided by the district court before we will address it on appeal. *State v. Krogmann*, ___ N.W.2d ___, ___ (Iowa 2011); *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2006); *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997) ("Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal."); *Harper v. Cedar Rapids Television Co., Inc.*, 244 N.W.2d 782, 786 (Iowa 1976) ("A motion never decided or ruled on in the trial court presents nothing for review in the appellate court. . . . The burden of demanding a ruling rests upon the one desiring it."). As Little acknowledges in his brief, "For reasons that are not clear in the record, it does not appear that the motion was ever ruled upon by the court." We find error was not preserved.

Nevertheless, if error was preserved, we find the trial information was not unconstitutionally vague. Further, in addition to the trial information, Little had the benefit of the first trial and was fully aware of the particulars of the offense charged against him. *State v. Marti*, 290 N.W.2d 570, 576 (Iowa 1980) ("The weight of authority holds that if an accused has been fully advised of the particulars of the offense by the State, although not necessarily by solely the indictment, the refusal of a bill of particulars does not constitute error. The employment of means other than a bill of particulars for informing the defendant may make a bill of particulars unnecessary."). Little cannot prevail on this argument.

III. Sufficiency of the Evidence.

> We review challenges to the sufficiency of the evidence for correction of errors at law. If a verdict is supported by substantial evidence, we will uphold a finding of guilt. Substantial evidence is that upon which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. The State must prove every fact necessary to constitute the crime with which the defendant is charged. The evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture. In conducting our review, we consider all the evidence in the record, that which is favorable as well as unfavorable to the verdict, and view the evidence in the light most favorable to the State.

State v. Neitzel, 801 N.W.2d 612, 624 (Iowa Ct. App. 2011) (internal citations and quotations omitted).

Little argues the State failed to carry its burden of proof of the elements of kidnapping under Iowa Code section 710.1 which provides in relevant part,

> A person commits kidnapping when the person either confines a person or removes a person from one place to another, knowing that the person who confines or removes the other person has neither the authority nor the consent of the other to do so; provided, that to constitute kidnapping the act must be accompanied by one or more of the following:
>
> . . . .
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> 3. The intent to inflict serious injury upon such person, or to subject the person to a sexual abuse.

Specifically he asserts there was insufficient evidence of the elements of confinement contemporaneous with serious injury or sexual abuse, claiming there was only proof of "purely mental or emotional confinement" and no physical restraint.

The jury was instructed that a person is "confined" when their "freedom to move about is substantially restricted by force, threat, or deception." A jury could have easily found that he confined his wife with force and threat of physical harm. There was evidence Little severely beat his wife, strangled her, and threatened her with weapons, among other acts. One instance that a neighbor witnessed was when Little's wife was in the yard and Little drove his truck "screeching towards" Jane. Jane was screaming in terror and Little asked Jane if she knew what was coming and that "he was going to crack her f***ing skull again." Jane ran into the garage, with Little following behind. He attacked Jane, including twice firing a gun toward her. One bullet went into another neighbor's house, which was later matched to one of Little's handguns.

Little's wife later reported that Little "would not allow her to leave the house" and also testified, "I was prohibited from leaving, but physically I couldn't." She explained that she could not physically "go up and down the stairs." Some of the injuries from which she suffered included brain injuries that were

characterized as a life-threatening injury. A doctor testified that these types of injuries could cause trouble with walking, dizziness, and memory loss. Further, the mortality rate for this type of injury is fifty percent and only about twenty percent of people will make a complete recovery.

Additionally, in Little's first appeal, we addressed this argument based upon substantially the same evidence and without considering the prior bad acts evidence erroneously admitted. We reach the same conclusion:

> For example, and this is just one example, a jury could have found that by brutally beating Jane, threatening to kill her, and taking away her means of communication with the outside world, Fred intended to and did confine her at home periodically against her will, so he could subject her to unwanted sex and perverse mind games.

State v. Little, No. 08-1125 (Iowa Ct. App. Mar. 10, 2010). In ruling on Little's motion for a new trial, the district court stated:

> [T]he defendant challenged the Court's ruling to submit this case to the jury at all on the charge of kidnapping, claiming that as a matter of law that the facts of the case do not warrant a kidnapping conviction.
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> The defendant made this same argument to the court of appeals following the last trial. . . .
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> . . . .
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> Now, it's unusual for a trial court to have a road map from the appellate courts concerning the law of a particular case. But in this case the appellate courts have already concluded that these facts can and do satisfy the elements of kidnapping in the first degree.
>
> The court rejects the defendant's arguments to the contrary.

As we previously found, we find sufficient evidence supports Little's first-degree kidnapping conviction.

IV. Motion for a New Trial.

> The district court has broad discretion in ruling on a motion for a new trial. We reverse where the district court has abused that

> discretion. To establish such abuse, [the defendant] must show that the district court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. We are slower to interfere with the grant of a new trial than with its denial.
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> On a weight-of-the-evidence claim,[[1]] appellate review is limited to a review of the exercise of discretion by the trial court, not of the underlying question of whether the verdict is against the weight of the evidence.

State v. Reeves, 670 N.W.2d 199, 202–03 (Iowa 2003).

Little states that the district court abused its discretion in denying his motion for a new trial, and essentially refers back to his sufficiency-of-the-evidence argument. He does not argue the district court did not apply a weight-of-the-evidence standard, but claims the district court abused its discretion because it should have found the verdict was against the weight of the evidence. As we stated above, where the district court applies the weight-of-the-evidence standard, our review it limited to the district court's exercise of discretion and not the underlying question of whether the verdict is against the weight of the evidence. Little asks this court to reweigh the evidence and makes no argument

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[1] In ruling on a motion for a new trial in a criminal case, the district court is to apply a weight-of-the-evidence standard. *State v. Wells*, 738 N.W.2d 214, 219 (Iowa 2007) ("A court may grant a new trial pursuant to Iowa Rule of Criminal Procedure 2.24(2)(*b*)(6) when 'the verdict is contrary to law or evidence.' The Iowa Supreme Court has held a verdict is contrary to the evidence under this rule if it is 'contrary to the weight of the evidence.'"). Under the "weight of the evidence standard," the trial court weighs the evidence and considers credibility as it determines whether "a greater amount of credible evidence supports one side of an issue . . . than the other." *State v. Reeves*, 670 N.W.2d 199, 202 (Iowa 2003). While trial courts have wide discretion in deciding motions for a new trial, such discretion must be exercised "carefully and sparingly" to insure the court does not "lessen the role of the jury as the principal trier of the facts." *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). The trial court grants a new trial only in the "exceptional case" where "a miscarriage of justice may have resulted." *Reeves*, 670 N.W.2d at 202. In the present case, there is no dispute that the district court applied the correct standard.

regarding the district court's exercise of discretion. We find his argument without merit.

AFFIRMED.